

*Independence*

*trustworthiness*

*accountability*

*vigilance*

*integrity*

Deaths of Dylan Kingi, Peter Bunyan and Holly Gunn and serious injury to Claire Badger following Police pursuit

May 2013



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# Introduction

INDEPENDENT POLICE CONDUCT AUTHORITY

1. At about 9.47pm on Saturday 14 July 2012, a car driven by Dylan James Kingi, aged 28, crashed on Nelson Road in Gisborne following a Police pursuit.
2. Mr Kingi and two of his passengers, Peter John Bunyan, aged 27, and Holly Kay Gunn, aged 25, died at the scene. The third passenger, Claire Sophie Badger, aged 25, was seriously injured in the crash.
3. Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings and recommendations.
4. The Authority has found that Police reached excessive speeds during the pursuit and did not fully comply with policy in respect of communication and the abandonment of pursuit.





# Background

INDEPENDENT POLICE CONDUCT AUTHORITY

## SUMMARY OF EVENTS

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### Events prior to the pursuit

5. On the evening of Saturday 14 July 2012, there was a social gathering at a house in Townley Street, Gisborne. Dylan Kingi, Peter Bunyan, Claire Badger and Holly Gunn were among those present.
6. At around 5.20pm, Police (including Officer A) attended a minor disorder incident at the Townley Street address. Officer A noted that the men involved appeared to be intoxicated. Police did not take formal action against any of the people at the address and after the Police had left the party continued.
7. At around 9.40pm Mr Kingi, Mr Bunyan, Ms Badger and Ms Gunn decided to drive to another party at an address in Patutahi. They all got into Mr Bunyan's white 1996 Mitsubishi Galant VR4 sedan.
8. Mr Kingi was in the driver's seat and Mr Bunyan was the front seat passenger. Ms Badger sat in the back seat behind Mr Kingi and Ms Gunn was seated behind Mr Bunyan.
9. Mr Kingi's sister was intended to be the sober driver for the group. She, along with their mother and Ms Badger, tried to persuade Mr Kingi to get out of the driver's seat because they believed he would be over the alcohol limit and unsafe to drive. But Mr Kingi refused to let his sister drive and drove away from the Townley Street address, leaving her behind.

### The pursuit

10. Officer A was driving a Category A marked Police car south along Wi Pere Street, a residential area in Gisborne.
11. A category A Police vehicle is authorised to be the lead car in pursuits. Officer A is certified as a gold licence holder and trained under the Professional Police Driver

Programme (PPDP), and therefore competent to engage in pursuits as the lead driver. As Officer A was the sole occupant of the car, he was also responsible for operating the radio and communicating with the Police Central Communications Centre (CentComms). His patrol car was not equipped with hands-free radio because the Eastern Police District currently uses an analogue radio system which does not support it.

12. As Officer A drove through the intersection of Wi Pere Street and Stout Street he saw a white car (the Mitsubishi driven by Mr Kingi) approaching him from the Roebuck Road bridge. His radar equipment detected that the Mitsubishi was travelling at 73 kph in a 50 kph speed zone.
13. Officer A did not know the identity of the driver or any of the passengers in the Mitsubishi. He had seen some of the occupants of the Mitsubishi earlier that evening at the disorder incident in Townley Street (see paragraph 6), but he did not recognise them at this time and did not know that the car had come from the Townley Street gathering.
14. By the time Officer A's radar equipment locked the Mitsubishi's speed, it had reduced to 59 kph.

#### *Urgent duty driving*

15. Officer A decided to stop the Mitsubishi's driver for exceeding the speed limit. He activated his patrol car's red and blue warning lights and pulled over to the left in preparation for a u-turn.
16. The officer had to wait for a white hatchback to pass before he could complete the manoeuvre. Mr Kingi's mother and sister were in the white hatchback following the Mitsubishi because they were concerned about Mr Kingi driving.
17. Officer A followed the hatchback and the Mitsubishi, which both turned left into Stout Street. The hatchback then pulled over to allow Officer A to pass. Mr Kingi's mother later said that she and her daughter went home after the Police car had passed them because they did not have enough petrol to continue following the Mitsubishi.
18. Officer A accelerated to about 80 kph in an effort to catch up to the Mitsubishi, which was about 100 metres ahead of him. Police policy requires officers to activate their patrol car's red and blue warning lights and the siren while urgent duty driving (see paragraphs 132-134 for policy), but Officer A did not activate his siren.
19. Officer A later said that initially he was not sure whether anybody inside the Mitsubishi had seen that he was signalling them to stop. He did not know the Mitsubishi's registration number or how many passengers there were.



20. Mr Kingi turned left into Devery Street, then right into Oak Street, and then right into Willow Street. Officer A followed but did not get any closer to the Mitsubishi during that time.
21. As Officer A followed the Mitsubishi into Willow Street, he formed the opinion that the driver had seen him but was not going to stop. The Mitsubishi then turned left from Willow Street into Stout Street.

#### *Formal commencement of pursuit*

22. Officer A activated his siren, increased his speed to about 100 kph, and notified the Police Central Communications Centre (CentComms) that he had a fleeing driver incident. At 9.45:27pm,<sup>1</sup> he advised the CentComms dispatcher: “... I’ve got a failing to stop on Stout Street, white Holden, I’m going 100 [kph], he’s going about 110 ...”. Officer A thought the fleeing car was a Holden but it was actually a Mitsubishi (see paragraph 7).
23. Officer A considered that the need to apprehend the fleeing driver outweighed the risks involved in the pursuit. When interviewed by the Authority, the officer said he was familiar with the road and did not believe the speed was excessive in the conditions. He stated:

*“That night was quite a mild night for that time of year. The road was dry; the traffic was light and the vehicle was driving within its own lane. I never viewed it losing traction at all and it had its headlights on.”*
24. The dispatcher immediately alerted the CentComms shift commander that a pursuit had been commenced. The shift commander was about to go off duty but he began supervising the pursuit as the pursuit controller.
25. Police fleeing driver policy requires that once a pursuit has been commenced, the communications centre dispatcher must give the warning: “If there is any unjustified risk to any person you are to abandon pursuit immediately, acknowledge.”
26. Officer A was about to report the fleeing car’s manner of driving but the dispatcher interrupted to give him the required warning. Officer A acknowledged the warning.
27. At this point the shift commander who was going off duty handed control of the pursuit over to the oncoming shift commander, who became the new pursuit controller. The handover consisted of the previous shift commander advising the new pursuit controller

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<sup>1</sup> This time and the following times stated in this report are based on the CentComms event chronology and the recording of the radio transmissions for this pursuit.

that the pursuit warning had been given. The new pursuit controller looked at the dispatcher's computer screen and saw that the dispatcher had typed "120/100". The pursuit controller understood this to mean that the fleeing driver was travelling at 120 kph in a 100 kph speed zone.

28. In fact, the pursuit was taking place in a 50 kph speed zone. The dispatcher later said that he thought Officer A had advised him that it was a 100 kph area; but he appears to have misheard or misunderstood the officer because the recording of the CentComms transmissions confirms that Officer A did not state the applicable speed limit (see paragraph 22). The dispatcher and pursuit controller only realised that the pursuit had actually taken place in a 50 kph area after it had ended.
29. At 9.45:54pm, shortly after Officer A had acknowledged the pursuit warning, the dispatcher asked Officer A to state the reason for the pursuit but the officer's response was inaudible. At 9.46:05pm the dispatcher repeated his request.
30. Meanwhile Officer A followed the Mitsubishi along Stout Street and observed that it was staying within its lane and had its headlights on. The officer lost sight of the fleeing car at times as it went through bends in the road near Atkinson Street and Lytton Road. He was having trouble hearing CentComms because of the siren noise and a "fuzzy feedback noise" on the radio.
31. Officer A was more than 300 metres behind the Mitsubishi as it travelled west on Stout Street. The fastest speed he reached during the pursuit was 127 kph between the Atkinson Street intersection and the Lytton Street roundabout. He could not catch up with fleeing car.
32. Officer A saw the Mitsubishi go through the roundabout at Lytton Road and continue heading west on Nelson Road. At 9.46:08pm he told the dispatcher: "Just turning, going straight through Lytton Road onto Nelson Road."
33. The dispatcher later said he thought Officer A had said he was on "Mountain Road". The pursuit controller also had difficulty hearing the name of the road and did not disagree with the dispatcher's interpretation. Neither of them was aware that there is no Mountain Road in Gisborne. When interviewed by the Authority, the dispatcher said:

*"The recordings [of the radio transmissions] are crystal clear but when they're actually being heard through headphones they can at times be not, where there's lots of background noises in the [CentComms] centre as well, everybody's talking, things are going on."*
34. At 9.46:14pm the pursuit controller prompted the dispatcher to ask Officer A for an update on the fleeing driver's speed and manner of driving. Officer A replied: "... speed, he's going about 130 [kph], I'm 120."

35. At 9.46:25pm the dispatcher asked Officer A about the road and weather conditions. Officer A responded that it was difficult to hear Comms and the road was dry. The dispatcher again asked about the reason for the pursuit, and Officer A said it was “*just a routine stop*”. The Authority’s view is that this was not an adequate explanation of what led Officer A to commence the pursuit, which was that the car had been exceeding the speed limit.
36. After driving through the Lytton Road roundabout onto Nelson Road, Officer A saw a set of headlights about 200 metres in front of him and believed it was the fleeing car. The car was travelling at the speed limit and Officer A decreased his speed as he caught up to it.
37. Officer A followed the car into Parkview Place and realised it was not the fleeing car. At 9.46:46pm the dispatcher asked Officer A for his location and direction of travel. Officer A replied that he was heading west on Parkview Place. He then advised the dispatcher that he had lost the fleeing car.
38. The officer turned off his patrol car’s siren and spoke to the driver of the car he had mistakenly followed, a pizza delivery man, who told him that the fleeing car had just overtaken him and had continued heading west down Nelson Road at high speed. The pizza delivery man later said that the Mitsubishi was probably travelling at about 120 kph when it passed him near the intersection of Nelson Road and Charteris Rise.
39. Police policy requires that a pursuit must be abandoned if Police lose sight of the fleeing vehicle for a sustained period of time, and sets out a procedure for officers to follow when abandoning a pursuit (see paragraphs 126-128 for policy). The policy states that the pursuing officers and the pursuit controller must communicate about the decision to abandon; the officers must then stop as soon as it is safe to do so and report the abandonment to the pursuit controller, confirming that they are stationary and stating their specific location.
40. After the pursuit has been abandoned, the pursuit controller may authorise a “*search phase*” during which Police units in the area are tasked with looking for the offending vehicle but are not permitted to engage in urgent duty driving (i.e. exceeding the speed limit and using warning lights and sirens – see paragraphs 129-130 for policy).
41. In this case, however, the communication aspects of the formal abandonment procedure were not followed by Officer A or the pursuit controller. Officer A did not notify CentComms that he had abandoned the pursuit; nor did the pursuit controller order Officer A to abandon it. The pursuit controller also did not explicitly authorise Officer A to begin a search phase.
42. The dispatcher and pursuit controller heard over the radio that Officer A had deactivated his siren and stopped to speak with a member of the public (the pizza delivery man). The

pursuit controller later explained that he believed Officer A had abandoned the pursuit himself and it was not necessary to order him to do so. He stated: *"I took it as read that the pursuit was over and that we were entering the search phase."* Officer A said that he was no longer pursuing the fleeing car and he *"just went into a search phase, looking for the vehicle"*.

43. At 9.47pm the pursuit controller and dispatcher asked Officer A for a description of the fleeing car and Officer A repeated that it was a white Holden (although it was actually a Mitsubishi; see paragraph 22). The dispatcher then asked where he had last seen the car and Officer A replied that he had spoken to a witness who said it was heading west on Nelson Road.
44. At 9.47:57pm, another police unit radioed the dispatcher asking for the fleeing car's registration number (which was unknown) and requesting that he repeat the description of the car.
45. Meanwhile Officer A left Parkview Place and drove down Nelson Road at normal speed. His patrol car's red and blue warning lights were still activated but the siren was off. The officer stopped and spoke to a man on the side of the road who said he had heard a car crash and a car horn sounding in the distance. At 9.48:31pm, Officer A reported this to the dispatcher and advised that he was looking for the car.
46. Officer A drove further down Nelson Road and found that the fleeing Mitsubishi had crashed into a fence post, a concrete power pole and a tree just after a right hand bend in the road. He saw that the power pole was lying in pieces all over the road and there were power lines around the Mitsubishi.
47. The pursuit, which began in Willow Street and was in effect abandoned at Parkview Place, covered a distance of approximately 2.5 kilometres and lasted for about one and a half minutes. The distance from Willow Street to the crash site on Nelson Road is approximately 3.4 kilometres.

#### **Police action following the crash**

48. Officer A immediately advised the dispatcher that the fleeing car had crashed and requested more Police units. He also asked for ambulances, the power provider and the Fire Service to attend.
49. Mr Kingi, Mr Bunyan and Ms Gunn had died at the scene. Ms Badger was able to climb out of the crashed Mitsubishi shortly after Officer A arrived and was taken to hospital.

## POLICE INVESTIGATION

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50. Police conducted an internal investigation into the pursuit and concluded that:
- i) Officer A's attempt to stop Mr Kingi was legally justifiable, and so was the "excessive speed" Officer A reached during the pursuit;
  - ii) Officer A breached Police policy by not operating his siren while urgent duty driving;
  - iii) Officer A did not strictly comply with correct communications procedure during the pursuit; and
  - iv) the dispatcher also did not comply with correct communications procedure and recorded incorrect assumptions (i.e. the applicable speed limit).
51. Police recommended that:
- i) Officer A and the dispatcher be re-trained on Police driving policy; and
  - ii) Police should review the practice of changing pursuit controllers during a pursuit and establish a best practice note.
52. An additional recommendation that arose from a review of the Police investigation was: "That all patrol cars should be fitted with hands-free capability to operate Police radio communications". The Police Reviewer commented that:

*"... it is unreasonable to expect an officer in a one-man patrol to drive the patrol car at high speed, have a heightened level of alertness regarding other road users, be constantly reassessing issues such as safety, and using one hand to operate the Police radio to keep Comms informed. This means that the officer would be driving with one hand in such circumstances."*

## POLICE CRASH ANALYSIS

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### Environment

53. The crash occurred just after a moderate right hand bend on Nelson Road in Gisborne, about 350 metres east of the intersection with Cameron Road. The speed limit for this area is 50 kph.
54. Nelson Road has one westbound lane and one eastbound lane separated by a white painted intermittent centreline with reflective cats-eyes. Solid white painted fog lines mark the outside of each lane. The road's surface is bitumen chip seal.

55. It was dark, the weather was fine and the road was dry at the time of the crash. There is no street lighting in the area.

### Crash analysis

56. The vehicle involved in the crash was a Mitsubishi Galant VR4 sedan. A vehicle inspector found no mechanical defects that in his opinion would have contributed to the cause of the crash.
57. The crash investigator determined that the crash occurred when the Mitsubishi slid off the left side of the road after Mr Kingi attempted to negotiate the right hand bend on Nelson Road at too high a speed. He calculated that the Mitsubishi was travelling at between 130 and 136 kph as it entered the bend, and noted *“the possible effects that alcohol may have had on Mr Kingi’s reaction times”*.
58. The crash investigator identified that all the passengers were more than likely wearing their seatbelts at the time of the crash, but Mr Kingi *“was more than likely not wearing his seatbelt correctly and possibly had it over his shoulder only [emphasis in original]”*. He concluded that Mr Kingi may not have survived even if he had been wearing his seatbelt.

### PARTIES INVOLVED

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#### Officer A

59. Officer A was not breath tested but there is no evidence to suggest he was affected by alcohol at the time of the pursuit.

#### Dylan Kingi

60. Mr Kingi had four convictions for driving with excess breath alcohol between 2002 and 2007. His full driver’s licence had expired on 24 September 2011 and had not been renewed.
61. A sample of Mr Kingi’s blood taken after the crash was found to contain 210 milligrams of alcohol per 100 millilitres of blood. The legal blood alcohol limit for a driver in New Zealand aged 20 years and over is 80 milligrams per 100 millilitres.

#### The surviving passenger

62. Ms Badger suffered a broken leg and internal injuries. She is receiving ongoing treatment.
63. When interviewed by Police the day after the crash, she said that the group had been intending to stop at Mr Bunyan’s house on Oak Street and she was planning on getting out of the car at that point because she did not want to be driven by Mr Kingi.

64. However they did not stop because the Police were following them. She said:

*"I was yelling at [Mr Kingi]. Pleading with him to stop .... He wasn't going to stop because he would've been way over the limit. He was drunk.*

*We went past Peter's house and turned up some other street and turned left back onto Stout Street and Dylan went all the way down Stout Street. I don't remember going off the road at that stage.*

*He was going well over the speed limit. Just way too fast. I don't know how fast we would have been going.*

*I remember yelling at him, "We can't even see the cops!" because they weren't even behind us then."*

#### **Cause of death**

65. Mr Kingi, Mr Bunyan and Ms Gunn all died due to severe head injuries sustained in the crash.







# The Authority's Investigation

INDEPENDENT POLICE CONDUCT AUTHORITY

## THE AUTHORITY'S ROLE

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66. Under the Independent Police Conduct Authority Act 1988 (the Act), the Authority's functions are to:
- receive complaints alleging misconduct or neglect of duty by any Police employee, or concerning any practice, policy or procedure of the Police affecting the person or body of persons making the complaint; and to
  - investigate, where it is satisfied there are reasonable grounds for doing so in the public interest, any incident in which a Police employee, acting in the course of his or her duty has caused or appears to have caused death or serious bodily harm.
67. Section 27(1) of the Act requires the Authority, on completion of its investigation, to form an opinion on whether any Police decision, act, omission, conduct, policy, practice or procedure was contrary to law, unreasonable, unjustified, unfair, or undesirable.

## THE AUTHORITY'S INVESTIGATION

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68. As required under section 13 of the Act, Police notified the Authority on 16 July 2012 of the deaths of Mr Kingi, Mr Bunyan and Ms Gunn and the serious injury of Ms Badger.
69. The Authority assigned an investigator, who travelled to the scene of the crash and viewed the environment where the pursuit took place.
70. The Authority's investigator reviewed material provided by Police, including statements from the officers involved in the pursuit, statements from independent witnesses, copies of the CentComms transmissions, and the crash investigation report. The Authority's investigator also independently interviewed the Police and communications staff directly involved in the pursuit.

ISSUES CONSIDERED

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71. The Authority's investigation considered the following issues:

- 1) Did Police comply with policy in respect of urgent duty driving?
- 2) Did Police comply with the law and fleeing driver policy at each stage of the pursuit, specifically in relation to the:
  - commencement of the pursuit;
  - communication;
  - speed and manner of driving; and
  - ongoing risk assessment/abandonment?



# The Authority's Findings

INDEPENDENT POLICE CONDUCT AUTHORITY

## ISSUE 1: DID POLICE COMPLY WITH POLICY IN RESPECT OF URGENT DUTY DRIVING?

72. Urgent duty driving occurs when a Police officer is carrying out a specified duty – such as apprehending an offender for a traffic offence – and complying with the traffic rules and regulations would prevent him or her from carrying out that duty (see paragraphs 132-134 for policy). In those situations Police do not have to comply with certain traffic rules, such as driving within the speed limit, as long as they use warning devices such as flashing lights and/or sirens.
73. Officer A was urgent duty driving from the time he activated his patrol car's red and blue warning lights and began following the Mitsubishi driven by Mr Kingi on Wi Pere Street, up until he turned into Willow Street. At that point Officer A formed the view that Mr Kingi had seen his signal to stop but was not going to comply and so Officer A notified CentComms that he was in pursuit of a fleeing driver (see paragraphs 15-21).
74. During this time Officer A reached a speed of 80 kph in a 50 kph area. He did not activate his patrol car's siren.
75. The Police urgent duty driving policy requires that officers must use both their warning lights and siren at all times while engaged in urgent duty driving. Officer A breached that policy by not activating his siren.

### FINDING

Officer A did not fully comply with the Police urgent duty driving policy because he did not activate his siren.

## ISSUE 2: DID POLICE COMPLY WITH THE LAW AND FLEEING DRIVER POLICY AT EACH STAGE OF THE PURSUIT?

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### Commencement of pursuit

76. Officer A had observed Mr Kingi driving at speeds of 73 and 59 kph in a 50 kph speed zone. He was authorised under the Land Transport Act 1998 to stop Mr Kingi for traffic enforcement purposes.
77. The pursuit was commenced in Willow Street after Officer A had signalled Mr Kingi to stop and given him a reasonable opportunity to do so. Officer A activated his lights and siren in compliance with Police policy. He also considered the risks involved in a pursuit and decided they did not outweigh the need to apprehend the fleeing driver (see paragraphs 22 and 23).
78. Officer A and his patrol vehicle were certified to conduct pursuits under the Professional Police Driver Programme. Officer A was a 'gold' rated driver.

#### FINDING

Officer A complied with the law and Police fleeing driver policy in commencing the pursuit.

### Communication

79. Officer A correctly notified CentComms about the pursuit and provided the dispatcher with his location, a brief description of the fleeing vehicle, and his and Mr Kingi's speed. The dispatcher issued the pursuit warning and obtained acknowledgement from Officer A, as required by the Police fleeing driver policy (see paragraphs 22-26).
80. Both Officer A and the dispatcher have said that they had difficulty hearing transmissions over the radio during the pursuit. In particular, the dispatcher appears to have mistakenly heard Officer A say that the pursuit was taking place in a 100 kph speed zone. He recorded that information on his computer, which also led the pursuit controller to believe that the applicable speed limit was 100 kph. As noted above, it was actually 50 kph. In addition the dispatcher thought he heard Officer A say he was on 'Mountain Road', but there was no Mountain Road in the area (see paragraphs 28-30 and 33).
81. The Police fleeing driver policy requires pursuing officers to state the posted speed limit when reporting the speed of the pursuit. Officer A should have advised CentComms that the applicable speed limit was 50 kph but did not.
82. The fleeing driver policy also requires the dispatcher to ask about the posted speed limit when enquiring about the speed of the pursuit. The Authority accepts that the dispatcher

initially thought Officer A had told him the speed limit was 100 kph – however when he later sought an update from Officer A on the fleeing driver’s speed and manner of driving (see paragraph 34), he should have also requested confirmation of the posted speed limit.

83. Officer A had to be prompted three times before he gave the reason for the pursuit. He then said it was “*just a routine stop*”. The Authority’s view is that Officer A should have explained that the reason for the pursuit was that Mr Kingi had been exceeding the speed limit. Just saying that it was a ‘routine stop’ was imprecise and did not convey accurate information about the nature of the incident to the dispatcher and pursuit controller at CentComms.
84. One of the pursuit controller’s duties is to decide whether or not the pursuit should continue. The justification for commencing the pursuit forms part of the pursuit controller’s assessment of whether the risks involved in the pursuit outweigh the need to apprehend the fleeing driver.
85. In this case the pursuit controller was not concerned about the lack of a detailed explanation for the reason for the pursuit, because he mistakenly thought the pursuit was happening in a 100 kph speed zone with minimal risk factors. When interviewed by the Authority he said:

*“I was aware that it wasn’t a satisfactory [explanation of the] reason for a pursuit however ... my understanding at this point was that we were doing 130 in a 100km zone on a dry road ... I didn’t consider there to be any other major risk factors so the [reason for the pursuit being stated as a] routine stop for me wasn’t such an issue.*

*... I wasn’t concerned with the reasons so much, due to the other risk factors in my opinion or my understanding not being really present.”*

#### FINDINGS

Officer A did not comply with the fleeing driver policy when he failed to report the posted speed limit to CentComms. He also should have explained that his reason for pursuing the fleeing car was excessive speed.

The dispatcher mistakenly recorded that the pursuit was taking place in a 100 kph speed zone when it was actually in a 50 kph zone. This inaccurate information led the pursuit controller to underestimate the risks involved in the pursuit.

The dispatcher should have sought an update on the posted speed limit from Officer A, every time Officer A reported his speed.

### Police speed and manner of driving

86. Officer A travelled at speeds of over 100 kph in a 50 kph zone during the pursuit, reaching 127 kph at one point. He was unable to catch up with the fleeing vehicle.
87. Officer A was familiar with the road and did not think his speed was excessive in the circumstances. When interviewed by the Authority, the officer explained that he conducted a risk assessment as required under the fleeing driver policy (see paragraph 117) and noted that the weather was good, the road was dry, and the level of the traffic was light. Furthermore the fleeing car had its headlights on, was staying in its own lane, and he never saw it losing traction (see paragraph 23).
88. Nonetheless the Authority's view is that the speeds reached by Officer A during the pursuit were not justified in this case. The pursuit was taking place in a residential area on a Saturday evening, on roads that are subject to 50 kph speed limit. The Authority considers that the risks involved in pursuing Mr Kingi in that area and at such high speeds were too great, and that Officer A should have decided to abandon the pursuit.

#### FINDING

The high speeds reached by Officer A during the pursuit (up to 127 kph in a residential 50 kph area) were not justified in the circumstances.

### Ongoing risk assessment/abandonment

89. As discussed above, the Authority has concluded that Officer A's assessment of the risks was inadequate in that it did not give enough weight to the speed limit and the excessive speeds reached, and that he should have abandoned the pursuit soon after it began, due to the high speeds involved and the area in which the pursuit was taking place.
90. The pursuit controller's ongoing risk assessment was impaired due to his mistaken belief that the applicable speed limit was 100 kph. He later told the Authority that he would have ordered Officer A to abandon the pursuit if he had known the posted speed limit was actually 50 kph.
91. In any event, the pursuit ended after Officer A lost sight of the Mitsubishi on Nelson Road and accidentally followed another car into Parkview Place. The officer deactivated his patrol car's siren (but not the warning lights) and advised CentComms that he had lost the fleeing car. After stopping and speaking to the driver of the car he had mistakenly followed, the officer drove further down Nelson Road with his warning lights activated in search of the fleeing car.
92. In essence the pursuit had been abandoned shortly after Officer A drove into Parkview Place (because he had lost the fleeing vehicle), and the officer then went into a search

phase. However Officer A and the pursuit controller did not explicitly communicate about the fact that the pursuit had been abandoned and the pursuit controller did not explicitly authorise Officer A to begin a search phase (see paragraphs 39-42). Nor did Officer A deactivate his warning lights as required by the abandonment procedure set out in the Police fleeing driver policy.

93. Officer A later explained that he left his patrol car's warning lights on in this instance because people had come out of their houses onto the street in response to the fleeing driver incident and he wanted to alert them to his presence.
94. The Authority understands that in this case both Officer A and the pursuit controller assumed that the pursuit was abandoned and a search phase had begun; nonetheless the Authority is of the view that clear communication about all aspects of a pursuit is an important part of the effective management of fleeing driver incidents. For safety reasons it is vital that officers and Comms staff follow the correct procedure for abandoning a pursuit and commencing a search phase.
95. The Authority finds that Officer A and the pursuit controller should have followed the abandonment procedure, which requires the pursuing officer to report the abandonment or acknowledge the pursuit controller's order to abandon, and to deactivate his or her warning devices (both siren and warning lights). However the Authority is satisfied that, due to distance between Officer A's patrol car and the Mitsubishi, the failure to follow the abandonment procedure had no bearing on the crash.
96. Instead of acting on an unspoken understanding, Officer A should have sought authorisation to commence a search phase from the pursuit controller, or the pursuit controller should have explicitly tasked Officer A with undertaking the search phase (see paragraphs 129-130 for policy).

#### FINDING

Officer A and the pursuit controller did not follow the prescribed requirements of the Police fleeing driver policy in respect of the abandonment procedure and search phase.







## Subsequent Police Action

INDEPENDENT POLICE CONDUCT AUTHORITY

97. Following this pursuit Officer A has been recertified as a 'gold' licensed driver under the Professional Police Driving Programme (PPDP). A PPDP panel has reviewed the officer's actions during this incident and reminded him of his responsibilities under the Police urgent duty driving and fleeing driver policies.
98. Additionally, other Gisborne officers have recently received refresher training on the Police fleeing driver policy.
99. The CentComms staff involved in this pursuit – i.e. the dispatcher, the pursuit controller and the initial pursuit controller (the shift commander who went off duty) – were debriefed, and the dispatcher was reminded of his responsibilities in respect of seeking and recording accurate information.





# Conclusions

INDEPENDENT POLICE CONDUCT AUTHORITY

100. Officer A was justified in commencing a pursuit of Mr Kingi after he failed to stop when signalled to do so. The reason for the pursuit was that Mr Kingi had been exceeding the speed limit. Unknown to the officer, Mr Kingi was also intoxicated.
101. Mr Kingi demonstrated by his actions that he was prepared to risk his life and the lives of others to avoid being caught by Police.
102. During the pursuit Officer A travelled at speeds of up to 127 kph on Stout Street, a 50 kph zone. He was unable to catch up to the fleeing vehicle. The pursuit ended after Officer A lost the fleeing vehicle on Nelson Road.
103. The Authority has found that Officer A did not comply with some elements of the Police urgent duty driving and fleeing driver policies during this incident. In particular Officer A should have:
  - i) activated his patrol car's siren while urgent duty driving prior to the formal commencement of the pursuit;
  - ii) reported the posted speed limit to CentComms;
  - iii) followed the correct abandonment procedure by communicating with the pursuit controller about the abandonment; and
  - iv) obtained authorisation from the pursuit controller before commencing a search phase.
104. Furthermore Officer A should have abandoned the pursuit shortly after it began due to the risks posed by the high speed of the pursuit in a residential, 50 kph area. The speed reached was excessive and inconsistent with the overriding principle of the Police fleeing driver policy that *"Public and staff safety takes precedence over the immediate apprehension of the offender."*
105. The Authority has also concluded that the CentComms dispatcher mistakenly recorded inaccurate information about the applicable speed limit, which ultimately misled the

pursuit controller about the true extent of the risks involved in the pursuit. The dispatcher should have sought confirmation of the posted speed limit when he requested an update on the fleeing driver's speed and manner of driving.

106. As the person responsible for the management of the pursuit, the pursuit controller should have ensured that Officer A complied with the prescriptive requirements of the fleeing driver policy in respect of abandonment, and should have verbally authorised Officer A to begin a search phase.

### Section 27 opinion

107. Section 27(1) of the Independent Police Conduct Authority Act 1988 (the Act), requires the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure the subject-matter of an investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.
108. The Authority has formed the opinion that the following actions were contrary to Police policy and, pursuant to section 27(1) of the Act, were undesirable:
- i) Officer A's failure to use his patrol car's siren while urgent duty driving;
  - ii) Officer A's failure to advise CentComms of the posted speed limit;
  - iii) the dispatcher's failure to ascertain the correct speed limit; and
  - iv) the pursuit controller and Officer A's failure to follow the correct abandonment and search phase procedures.
109. The Authority has also formed the opinion, pursuant to section 27(1) of the Act, that Officer A's failure to abandon the pursuit due to the risks posed by speeds of up to 127 kph in a 50 kph speed zone was unjustified.

# Recommendations

INDEPENDENT POLICE CONDUCT AUTHORITY

110. The Authority endorses the Police investigator's recommendation that Police should review the practice of changing pursuit controllers during a pursuit and establish a best practice note (see paragraph 51(ii)).
111. Pursuant to section 27(2) of the Act, the Authority recommends that the New Zealand Police:
- 1) continue with the digital roll-out and the implementation of hands-free technology in all operational vehicles;
  - 2) continue developing, as a matter of urgency, policy and procedures for compulsory drug and alcohol testing of officers involved in critical incidents;
  - 3) amend the fleeing driver policy's communication procedure so that it requires officers to state a specific, rather than a generic, reason for commencing a pursuit.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

9 May 2013





# Appendix: Applicable Laws and Policies

INDEPENDENT POLICE CONDUCT AUTHORITY

## LEGISLATIVE AUTHORITY FOR PURSUITS

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112. Under the Land Transport Act 1998, the Police are empowered to stop vehicles for traffic enforcement purposes. Where such a vehicle fails to stop, the Police may begin a pursuit.

## FLEEING DRIVER POLICY

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113. The Police fleeing driver policy addresses *“the conduct and management of how Police pursue fleeing drivers”*.

### Definition

114. Under the policy, a fleeing driver incident occurs when (i) the driver of a vehicle has been signalled by Police to stop, (ii) the driver fails to stop and attempts to evade apprehension, and (iii) Police take action to apprehend the driver. The Police tactic to apprehend is referred to as a pursuit.

### Overriding principle

115. Under the Police fleeing driver policy, the overriding principle for conduct and management of pursuits is: *“Public and staff safety takes precedence over the immediate apprehension of the offender.”*

### Risk assessment

116. Under the Police fleeing driver policy, the pursuing officer[s] must carry out a risk assessment **both prior to initiation and during a pursuit** (emphasis added). The policy states that *“assessing the risks must be a continuous process until the pursuit is resolved or abandoned.”* The officers involved in the pursuit must provide situation reports to the pursuit controller in a timely manner to enable the pursuit controller to make an independent assessment of the risks and manage the pursuit including whether to direct the abandonment of the pursuit.

117. The assessment must be based on the following: consideration of the speed limit and manner of driving by the offending vehicle; identity and other characteristics of the occupants of the offending vehicle; weather conditions; the environment, including the location, road type and potential hazards; traffic conditions, including vehicle and pedestrian as well as time of day; and capabilities of the Police driver and vehicle. The pursuing officers and the pursuit controller must then use the risk assessment factors to:

*“...determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit to:*

- *the public*
- *the occupants of the pursued vehicle*
- *Police.”*

118. The policy instructs that if there is no need to immediately apprehend the fleeing driver, or the risks are too great, a pursuit must **not** be initiated, or should be abandoned (emphasis in Police policy).

### **Communication requirements**

119. When a pursuit commences, the communications centre must be notified. The communications centre must provide the warning referred to in paragraph 25, which the pursuing officer[s] must acknowledge. The pursuing officer[s] must provide information about their location and direction of travel. The communications centre must prompt for information about the reason for the pursuit, vehicle description, driving speed and posted speed limit, road and traffic conditions, weather, the offender’s manner of driving and identity, and the Police driver and vehicle classifications as well as confirmation that warning devices are activated on the Police car.

### **Roles and responsibilities**

120. Under the policy, the driver of the lead Police vehicle has primary responsibility for the initiation, continuation and conduct of a pursuit. The driver must comply with relevant legislation, ensure lights and siren are activated, drive in a manner that prioritises public and Police safety, continue to undertake risk assessments throughout the pursuit, maintain constant communication with the communications centre, comply with all directions from the pursuit controller (i.e. the shift commander at the Police communications centre), and comply with all directions from a Police passenger if the passenger is senior in rank or service.
121. The passenger in a pursuing vehicle must assist the driver by operating the radio and advising of possible hazards. If senior in rank or service, the passenger may also direct the driver to abandon the pursuit.



122. The dispatcher at the Police communications centre must advise the shift commander (pursuit controller) that a pursuit has commenced, maintain radio communications with staff involved in the pursuit, give the safety reminder referred to in paragraph 25, and communicate instructions from the pursuit controller. If a new unit takes over as the lead pursuit vehicle, the dispatcher must re-issue the safety warning to the driver.
123. The pursuit controller (i.e. the shift commander at the communications centre) is responsible for supervising the pursuit and coordinating the overall Police response, and for selecting and implementing appropriate tactics. When a shift commander is unavailable, a communications centre team leader may take over as pursuit controller.

### **Driver and vehicle classification**

124. Under the fleeing driver and PPDP policies, pursuits may only be carried out by drivers who have qualified under the Professional Police Driver Programme. Officers who hold a gold or silver licence may undertake a pursuit; however a 'silver' rated driver must be supervised by a 'gold' rated driver (unless there are exceptional circumstances). The policies also place restrictions on which Police vehicles can take part in pursuits.
125. When considering whether to commence a pursuit, the capabilities of the officer and the vehicle must form part of the risk assessment, including: the experience of the Police driver, the type of Police vehicle, and whether it is a single crewed vehicle. The pursuit controller is required to:
- replace vehicles driven by 'silver' rated drivers in a pursuit with vehicles driven by 'gold' rated drivers as soon as possible;
  - replace category B vehicles in a pursuit with category A vehicles at the earliest opportunity; and
  - ensure that a secondary pursuit unit takes over the commentary if the primary unit is single-crewed.

### **Abandonment**

126. A pursuit must be abandoned if at any stage the risks to safety outweigh the immediate need to apprehend the offender. The Police driver, passenger (if senior in rank or service) and the pursuit controller are all authorised to abandon pursuit. The pursuit controller must then give the direct order: *"All units, [Comms Centre] Alpha, abandon pursuit now. I say again, all units abandon pursuit now."*
127. The policy states that:

*"A pursuit must be abandoned when any of the following criteria apply:*

- *an offender’s identity becomes known and apprehension can be effected later, so long as there is no immediate threat to public or staff safety or the fleeing vehicle’s locations is no longer known*
- *the distance between the primary unit and the offending vehicle is such, that in order for the Police vehicle to catch up to it, the speed involved creates an additional risk, and Police no longer has the ability to warn road users of the fleeing vehicle*
- *if a person is injured during the pursuit and there is no other unit available to render assistance*
- *there is a sustained loss of contact between the primary and / or secondary units with Comms, or the units fail to provide critical information to Comms in a timely manner*
- *when the siren and / or warning lights fail to operate*
- *any risk assessment criteria conditions change, such as an increase in traffic volumes or weather or road conditions, that mean the risks of continuing with the pursuit outweighs the need for immediate apprehension of the fleeing driver.”*

128. The policy sets out the steps that must be carried out following a decision to abandon a pursuit:

<b>Step</b>	<b>Action</b>
1	<i>Acknowledge the direction to abandon pursuit, or advise the pursuit controller that the pursuit has been abandoned.</i>
2	<i>Immediately reduce speed to increase the distance between the fleeing vehicle and their own.</i>
3	<i>Deactivate warning devices once below the speed limit.</i>
4	<i>Stop as soon as it is safe to do so.</i>
5	<i>Report abandonment to the pursuit controller, confirming they are stationary and stating their specific location. This formally concludes the pursuit.</i>
6	<i>Undertake a search phase if authorised by the pursuit controller.</i>

### **Search phase**

129. Once a pursuit has been formally abandoned, the pursuit controller may authorise units in the area to undertake a search to locate the fleeing vehicle. The policy states that there is no longer a justification for units to engage in urgent duty driving and the search phase units must not exceed the posted speed limit.

130. If the fleeing vehicle is located during the search phase, the unit may signal the driver to stop. However if the driver fails to stop, the unit must seek and receive approval to recommence the pursuit from the pursuit controller before the pursuit can continue.

### Recommencement

131. An abandoned pursuit must not be recommenced without the approval of the pursuit controller. Approval to recommence will only be considered if:
- the situation has changed following abandonment; or
  - the risk assessment criteria indicates that the risks involved in the pursuit have reduced, so that the need to immediately apprehend the offender is no longer outweighed by the risks posed by recommencing the pursuit.

### URGENT DUTY DRIVING POLICY

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132. Urgent duty driving is defined as occurring when:

*“...an officer on duty is **either**:*

- *responding to a critical incident*
- *apprehending an offender for a traffic or criminal offence*
- *engaged in a pursuit; or*
- *engaged in activities approved by the commissioner in writing*

***and** to comply with traffic rules and regulations would prevent the execution of that duty [emphasis in original].”*

133. Critical incidents include situations involving (i) force or the threat of force, (ii) any person facing the risk of serious harm, or (iii) officers responding to people in the act of committing a crime.
134. When engaged in urgent duty driving, Police must use their warning lights and sirens *“at all times (continuously) unless a “silent approach” is tactically appropriate....”*



# About the Authority

## WHAT IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Sir David J. Carruthers.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority has highly experienced investigators who have worked in a range of law enforcement roles in New Zealand and overseas.

## WHAT ARE THE AUTHORITY'S FUNCTIONS?

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Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

On completion of an investigation, the Authority must determine whether any Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority can make recommendations to the Commissioner.



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